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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA, PHOENIX DIVISION**

13 Richard Winters, Jr., individually and) Case No.

14 on behalf of all others similarly situated,))

15 Plaintiff,)) **CLASS ACTION**

16 vs.)) **COMPLAINT FOR VIOLATIONS**

17 Plateau Data Services, INC. and Plateau)) **OF:**

18 Data Services, LLC. d/b/a) 1. NEGLIGENCE VIOLATIONS
19 RateMarketplace,) OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]

20 Defendant.) 2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]

21) 3. NEGLIGENCE VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]

22) 4. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]

23)) **DEMAND FOR JURY TRIAL**

24 Plaintiff RICHARD WINTERS, JR (“Plaintiff”), individually and on
25 behalf of all others similarly situated, alleges the following upon information and
26 belief based upon personal knowledge:
27
28

NATURE OF THE CASE

3 1. Plaintiff brings this action individually and on behalf of all others
4 similarly situated seeking damages and any other available legal or equitable
5 remedies resulting from the illegal actions of PLATEAU DATA SERVICES,
6 INC, AND PLATEAU DATA SERVICES, LLC DBA RATEMARKETPLACE
7 (“Defendants”), in negligently, knowingly, and/or willfully contacting Plaintiff on
8 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
9 Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
10 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

12 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
13 a resident of Arizona, seeks relief on behalf of a Class, which will result in at
14 least one class member belonging to a different state than that of Defendants a
15 Delaware company. Plaintiff also seeks up to \$1,500.00 in damages for each call
16 in violation of the TCPA, which, when aggregated among a proposed class in the
17 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
18 Therefore, both diversity jurisdiction and the damages threshold under the Class
19 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has
20 jurisdiction.

21 3. Jurisdiction is also proper because there is a federal question due to
22 the fact that Plaintiff is alleging Defendants violated the TCPA, a federal statute.

23 4. Venue is proper in the United States District Court for the District of
24 Arizona pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does business
25 within the State of Arizona and Plaintiff resides within the County of Maricopa

PARTIES

27 5. Plaintiff is a natural person residing in Mesa Arizona and is a
28 "person" as defined by 47 U.S.C. § 153 (39).

6. Defendants, PLATEAU DATA SERVICES, INC, AND PLATEAU DATA SERVICES, LLC DBA RATEMARKETPLACE (“Defendants”) are real estate brokers, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

7. The above-named Defendants, and their subsidiaries and agents, are collectively referred to as "Defendants."

8. Plaintiff is informed and believes that at all relevant times, each and every Defendants were acting as an agent and/or employee of each of the other Defendants and were acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein were made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

9. Beginning in or around November 2019, Defendants contacted Plaintiff on Plaintiff's cellular telephone number ending in -6678, in an attempt to solicit Plaintiff to purchase Defendants' services.

10. Defendants used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

11. Defendants' calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

12. Defendants' calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

13. During all relevant times, Defendants did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

14. Further, Plaintiff's cellular telephone number ending in -6678 was

1 added to the National Do-Not-Call Registry at least 40 days prior to November
2 2019.

3 15. Defendants called Plaintiff in an attempt to solicit its services and in
4 violation of the National Do-Not-Call provisions of the TCPA.

5 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
6 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.

7 17. Upon information and belief, and based on Plaintiff's experiences of
8 being called by Defendants after being on the National Do-Not-Call list at least
9 30 days prior to Defendants' initial call, and at all relevant times, Defendants
10 failed to establish and implement reasonable practices and procedures to
11 effectively prevent telephone solicitations in violation of the regulations
12 prescribed under 47 U.S.C. § 227(c)(5).

13 **CLASS ALLEGATIONS**

14 18. Plaintiff brings this action individually and on behalf of all others
15 similarly situated, as a member the two proposed classes (hereafter, jointly, "The
16 Classes").

17 19. The class concerning the ATDS claim for no prior express consent
18 (hereafter "The ATDS Class") is defined as follows:

19 All persons within the United States who received any
20 solicitation/telemarketing telephone calls from
21 Defendants to said person's cellular telephone made
22 through the use of any automatic telephone dialing
23 system or an artificial or prerecorded voice and such
24 person had not previously consented to receiving such
Complaint

25
26 20. The class concerning the National Do-Not-Call violation (hereafter
27 "The DNC Class") is defined as follows:
28

1 All persons within the United States registered on the
2 National Do-Not-Call Registry for at least 30 days, who
3 had not granted Defendants prior express consent nor
4 had a prior established business relationship, who
5 received more than one call made by or on behalf of
6 Defendants that promoted Defendants' products or
services, within any twelve-month period, within four
years prior to the filing of the complaint.

7 21. Plaintiff represents, and is a member of, The ATDS Class, consisting
8 of all persons within the United States who received any collection telephone
9 calls from Defendants to said person's cellular telephone made through the use of
10 any automatic telephone dialing system or an artificial or prerecorded voice and
11 such person had not previously not provided their cellular telephone number to
12 Defendants within the four years prior to the filing of this Complaint.

13 22. Plaintiff represents, and is a member of, The DNC Class, consisting
14 of all persons within the United States registered on the National Do-Not-Call
15 Registry for at least 30 days, who had not granted Defendants prior express
16 consent nor had a prior established business relationship, who received more than
17 one call made by or on behalf of Defendants that promoted Defendants' products
18 or services, within any twelve-month period, within four years prior to the filing
19 of the complaint.

20 23. Defendants, its employees and agents are excluded from The
21 Classes. Plaintiff does not know the number of members in The Classes, but
22 believes the Classes members number in the thousands, if not more. Thus, this
23 matter should be certified as a Class Action to assist in the expeditious litigation
24 of the matter.

25 24. The Classes are so numerous that the individual joinder of all of its
26 members is impractical. While the exact number and identities of The Classes
27 members are unknown to Plaintiff at this time and can only be ascertained
28 through appropriate discovery, Plaintiff is informed and believes and thereon

1 alleges that The Classes includes thousands of members. Plaintiff alleges that
2 The Classes members may be ascertained by the records maintained by
3 Defendant.

4 25. Plaintiff and members of The ATDS Class were harmed by the acts
5 of Defendants in at least the following ways: Defendants illegally contacted
6 Plaintiff and ATDS Class members via their cellular telephones thereby causing
7 Plaintiff and ATDS Class members to incur certain charges or reduced telephone
8 time for which Plaintiff and ATDS Class members had previously paid by having
9 to retrieve or administer messages left by Defendants during those illegal calls,
10 and invading the privacy of said Plaintiff and ATDS Class members.

11 26. Common questions of fact and law exist as to all members of The
12 ATDS Class which predominate over any questions affecting only individual
13 members of The ATDS Class. These common legal and factual questions, which
14 do not vary between ATDS Class members, and which may be determined
15 without reference to the individual circumstances of any ATDS Class members,
16 include, but are not limited to, the following:

- 17 a. Whether, within the four years prior to the filing of this
18 Complaint, Defendants made any telemarketing/solicitation
19 call (other than a call made for emergency purposes or made
20 with the prior express consent of the called party) to a ATDS
21 Class member using any automatic telephone dialing system
22 or any artificial or prerecorded voice to any telephone number
23 assigned to a cellular telephone service;
- 24 b. Whether Plaintiff and the ATDS Class members were
25 damaged thereby, and the extent of damages for such
26 violation; and
- 27 c. Whether Defendants should be enjoined from engaging in
28 such conduct in the future.

1 27. As a person that received numerous telemarketing/solicitation calls
2 from Defendants using an automatic telephone dialing system or an artificial or
3 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
4 claims that are typical of The ATDS Class.

5 28. Plaintiff and members of The DNC Class were harmed by the acts of
6 Defendants in at least the following ways: Defendants illegally contacted Plaintiff
7 and DNC Class members via their telephones for solicitation purposes, thereby
8 invading the privacy of said Plaintiff and the DNC Class members whose
9 telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the
10 DNC Class members were damaged thereby.

11 29. Common questions of fact and law exist as to all members of The
12 DNC Class which predominate over any questions affecting only individual
13 members of The DNC Class. These common legal and factual questions, which
14 do not vary between DNC Class members, and which may be determined without
15 reference to the individual circumstances of any DNC Class members, include,
16 but are not limited to, the following:

- 17 a. Whether, within the four years prior to the filing of this
18 Complaint, Defendants or its agents placed more than one
19 solicitation call to the members of the DNC Class whose
20 telephone numbers were on the National Do-Not-Call Registry
21 and who had not granted prior express consent to Defendants
22 and did not have an established business relationship with
23 Defendant;
- 24 b. Whether Defendants obtained prior express written consent to
25 place solicitation calls to Plaintiff or the DNC Class members'
26 telephones;
- 27 c. Whether Plaintiff and the DNC Class member were damaged
28 thereby, and the extent of damages for such violation; and

1 d. Whether Defendants and its agents should be enjoined from
2 engaging in such conduct in the future.

3 30. As a person that received numerous solicitation calls from
4 Defendants within a 12-month period, who had not granted Defendants prior
5 express consent and did not have an established business relationship with
6 Defendants, Plaintiff is asserting claims that are typical of the DNC Class.

7 31. Plaintiff will fairly and adequately protect the interests of the
8 members of The Classes. Plaintiff has retained attorneys experienced in the
9 prosecution of class actions.

10 32. A class action is superior to other available methods of fair and
11 efficient adjudication of this controversy, since individual litigation of the claims
12 of all Classes members is impracticable. Even if every Classes member could
13 afford individual litigation, the court system could not. It would be unduly
14 burdensome to the courts in which individual litigation of numerous issues would
15 proceed. Individualized litigation would also present the potential for varying,
16 inconsistent, or contradictory judgments and would magnify the delay and
17 expense to all parties and to the court system resulting from multiple trials of the
18 same complex factual issues. By contrast, the conduct of this action as a class
19 action presents fewer management difficulties, conserves the resources of the
20 parties and of the court system, and protects the rights of each Classes member.

21 33. The prosecution of separate actions by individual Classes members
22 would create a risk of adjudications with respect to them that would, as a practical
23 matter, be dispositive of the interests of the other Classes members not parties to
24 such adjudications or that would substantially impair or impede the ability of such
25 non-party Class members to protect their interests.

26 34. Defendants have acted or refused to act in respects generally
27 applicable to The Classes, thereby making appropriate final and injunctive relief
28 with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class

35. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

36. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

37. As a result of Defendants' negligent violations of 47 U.S.C. § 227(b), Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

38. Plaintiff and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

39. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

40. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

41. As a result of Defendants' knowing and/or willful violations of 47

U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

42. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class

43. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

44. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

45. As a result of Defendants' negligent violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

46. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

47. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

48. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

49. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

50. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendants' negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
 - Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C.

1 §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
2 • Any and all other relief that the Court deems just and proper.

3 **THIRD CAUSE OF ACTION**

4 **Negligent Violations of the Telephone Consumer Protection Act**

5 **47 U.S.C. §227(c)**

- 6 • As a result of Defendants' negligent violations of 47 U.S.C.
7 §227(c)(5), Plaintiff and the DNC Class members are entitled to and
8 request \$500 in statutory damages, for each and every violation,
9 pursuant to 47 U.S.C. 227(c)(5).
10 • Any and all other relief that the Court deems just and proper.

11 **FOURTH CAUSE OF ACTION**

12 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

13 **Act**

14 **47 U.S.C. §227(c)**

- 15 • As a result of Defendants' willful and/or knowing violations of 47
16 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are
17 entitled to and request treble damages, as provided by statute, up to
18 \$1,500, for each and every violation, pursuant to 47 U.S.C.
19 §227(c)(5).
20 • Any and all other relief that the Court deems just and proper.

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JURY DEMAND

51. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 8th Day of February, 2020.

Kazerouni Law Group, APC

By: /s/ Ryan L. McBride

Ryan L. McBride, Esq.

Counsel for Plaintiff and the Proposed Class